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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,563	10/07/2003	Stephen C. Jacobsen	21109.NP	4155

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EXAMINER	
VU, MICHAEL T	

ART UNIT	PAPER NUMBER
2683	

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	**Application No.** 10/680,563	**Applicant(s)** JACOBSEN ET AL.	
	Examiner Michael Vu	**Art Unit** 2683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-24 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-24 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 10/07/03 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 2 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding to **claim 2**, the word "comfortably" cannot be measured / quantified and is therefore indefinite. And further this claim attempts to dictate how to hold the phone; this is not a valid claim since a user can operate the phone any way they choose. See claim 10 languages, which is proper and definite.

Regarding to **claim 23**, the claim attempts to dictate how to hold the phone; this is not a valid claim since a user can operate the phone any way they choose. See claim 10 languages, which is proper and definite.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 - 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Wang (US 2002/0155864).

Regarding **claim 1**, Wang teaches a portable communication device (mobile communication device, title, abstract), comprising: a housing having an operating surface and having an upright phone operating position (Fig. #2 housing); a communications processor (Fig. #3 Control Processor Unit #11), disposed in the housing (Fig. #1), operable to receive and transmit a communications signal (Fig. #3 Communication Module #10); a display (Fig. #1, and Display Unit #21), coupled to the communications processor (Fig. #3), positioned nearer a lower portion of the operating surface than an upper portion of the operating surface with the housing disposed in the upright phone operating position (Fig. #2, shows display on bottom portion); and a keypad (Fig. #2, element 15), coupled to the communications processor (Fig. #3), positioned above the display nearer the upper portion of the operating surface than the lower portion of the operating surface (Fig. #2, shows keypad on top portion).

Regarding **claim 2**, Wang teaches the portable communication device of claim 1, wherein the housing comprises a back side operable to be held in the upright phone operating position with all four fingers of one hand positioned around the back side of the housing and with a thumb of the one hand comfortably positioned over the keypad on the operating surface (Fig. #2 shows for both users who are right handed or left handed be able to press any keypad or button by thumb, and it's inherence. As examiner noted that Wang's phone further teaches, it can be use in different ways of holding it or press by thumb or different hand or finger).

Regarding **claim 3**, Wang teaches the portable communication device of claim 1, wherein the keypad comprises an alpha-numeric key pad arrangement with readable indicia in an upright orientation with the housing held in the upright phone operating position (Fig. #2 shows keypad and indicia to display text or images).

Regarding **claim 4**, Wang teaches the portable communication device of claim 1, wherein the keypad comprises function keys with readable indicia in an upright orientation with the housing held in the upright phone operating position (Fig. #2 shows keypad, and upright phone).

Regarding **claim 5**, Wang teaches the portable communication device of claim 1, further comprising a transducer (Fig. #3 Communication Module 10), operatively coupled to the communications processor (Fig. #3, and Control Processor Unit #10), to receive an audio input signal to be transmitted by the communications processor (Fig. #3, and Communication Module #10).

Regarding **claim 6**, Wang teaches the portable communication device of claim 5, wherein the transducer comprises a microphone positioned adjacent the display at the lower portion of the operating surface (Fig. #5 Sonic Input Unit #23 which is microphone on bellow Display Unit).

Regarding **claim 7**, Wang teaches the portable communication device of claim 1, further comprising a speaker operatively coupled to the communications processor operable to respond to a signal received from the communications processor to generate audio sound (Fig. #5 Sonic Output Unit #14 which is a speaker phone connect to communication processor).

Regarding **claim 8**, Wang teaches the portable communication device of claim 7, wherein the speaker is positioned at the keypad at the upper portion of the operating surface of the housing (Fig. #2 Sonic Output Unit #14 is a speaker on top of keypad).

Regarding **claim 9**, Wang teaches the portable communication device of claim 1, further comprising a battery disposed in the housing operable to provide power to the portable communication device (Fig #3, element #30 Rechargeable Battery).

Regarding **claim 10**, Wang teaches a hand-held portable communication device comprising: a communications processor operable to receive and transmit communications signals (Fig. #3 Communication Module #10); a speaker operable to respond to a signal received from the communications processor to generate audio sound (Fig. #2 Sonic Output Unit #14 is a speaker); a transducer operable to respond to an audio input to convert the audio input into an electrical signal to be processed for output by the communications processor (Fig. #5 Sonic Input Unit #23 which is microphone on bellow Display Unit); a display operable to respond to a data signal received from the communications processor to display data (Fig. #1, and Display Unit #21); and a keypad operable to convert input on the keypad into communications signals to be processed by the communications processor and displayed on the display (Fig. #2, element 15); the keypad being physically positioned above the data display when held in a user's hand so as to provide operation by a single hand holding the portable communication device and using an opposable digit of the hand so as to allow viewing of the data entry display by the user during use of the keypad (Fig. #2, shows keypad above of a display unit).

Regarding **claim 11**, Wang teaches the hand-held portable communication device of claim 10, further comprising an antenna coupled to the communications processor and operable to receive and transmit communications signals (Fig. #2, element #12 antenna).

Regarding **claim 12**, Wang teaches the hand-held portable communication device of claim 10, wherein the keypad comprises an alpha-numeric key pad arrangement with readable indicia in an upright orientation with the portable communication device held in an upright phone operating position (Fig. #2 shows keypad and indicia to display text or images).

Regarding **claim 13**, Wang teaches the hand-held portable communication device of claim 10, further comprising a battery (Fig. #3 Rechargeable Battery), coupled to the communications processor (Fig. #3 Control Processor Unit #11 / Communication Module #10), operable to provide power to the portable communication device Fig. #3, element #30 Rechargeable Battery).

Regarding **claim 14**, Wang teaches the hand-held portable communication device of claim 10, wherein the transducer comprises a microphone positioned adjacent the display at a lower portion of the portable communication device (Fig. #5 Sonic Input Unit #23 which is microphone on bellow Display Unit).

Regarding **claim 15**, Wang teaches the hand-held portable communication device of claim 10, wherein the speaker is positioned at the keypad at an upper portion of the portable communication device (Fig. #2 Sonic Output Unit #14 is a speaker on top of keypad).

Regarding **claim 16**, Wang teaches a hand-held portable communication device comprising: a housing (Fig. #2); processing means (Fig. #3), within the housing (Fig. #2, and Fig. #3), for processing communications signals (Fig. #2, and Fig. #3); speaker means in the housing for generating an audio sound in response to a signal received from the processing means (Fig. #2, and Fig. #3); microphone means (Fig. #5 Sonic Input Unit), coupled to the processing means (Fig. #5), for generating an audio signal in response to acoustic waves (Fig. #5, Sonic Input Unit); display means (Fig. #2, element 21), located within the housing (Fig. #2, #10), for displaying data responsive to a data signal received from the processing means (Fig. #2, and Fig. #5); and data input means (Fig. #2, and Fig. #5), located within the housing (Fig. #2, and Fig.5), for inputting and converting input pulses into communications signals to be processed by the processor means and displayed on the display means and is positioned above the display means so as to provide operation by a single hand holding the housing and using an opposable digit of the hand so as to allow viewing of the display means by the user during use of the inputting and converting means (Fig. #2, and Fig. #5 shows and reads on).

Regarding **claim 17**, Wang teaches the hand-held portable communication device of claim 16, further comprising means for providing electrical power to the portable communication device (rechargeable battery #30 provides all the electric power needed [0019]).

Regarding **claim 18**, Wang teaches the hand-held portable communication device of claim 16, wherein the speaker means is an earpiece (Fig. #2, element 14, and Fig. #5 Sonic Output Unit).

Regarding **claim 19**, Wang teaches the hand-held portable communication device of claim 16, further comprising antenna means, coupled to the processor means, for receiving and transmitting electric wave signals to be processed by the processor means (Fig. #5, Antenna #12, CPU #11).

Regarding **claim 20**, Wang teaches the hand-held portable communication device of claim 16, wherein the data input means comprises a keypad having an alpha-numeric key pad arrangement with readable indicia in an upright orientation with the housing held in an upright phone operating position (Fig. #2 shows keypad and indicia to display text or images).

Regarding **claim 21**, Wang teaches the hand-held portable communication device of claim 16, wherein the microphone means is positioned adjacent the display means at a lower portion of the housing with the housing held in an upright phone operating position (Fig. #5 Sonic Input Unit #23 that is microphone on bellow Display Unit).

Regarding **claim 22**, Wang teaches the hand-held portable communication device of claim 16, wherein the speaker means is positioned at the data input means at an upper portion of the housing with the housing held in an upright phone operating position (Fig. #2, element #14).

Regarding **claim 23**, Wang teaches a method for operating a hand-held portable communication device (mobile communication device, title, abstract), the method comprising: holding a portable communication device in an upright phone operating position with one hand of a person having all four fingers disposed around a back side of the portable communication device and a thumb positioned over an upper portion of an operating surface of the portable communication device (Fig. #2 reads on for both users who are right handed or left handed be able to press any keypad or button by thumb); depressing keys of a keypad in the upper portion of the operating face of the portable communication device with the thumb of the one hand comfortably disposed over the keypad (Fig. #2 shows for both users who are right handed or left handed be able to press any keypad or button by thumb, and it's inherence. As examiner noted that Wang's phone further teaches, it can be use in different ways of holding it or press by thumb or different hand or finger); and viewing readable indicia uprightly oriented in a display defined in a lower portion of the operating face below the keypad with the portable communication device held in the upright phone operating position (Fig. #2 shows a display unit on the bottom of keypad easy to read or to see).

Regarding **claim 24**, Wang teaches the method of claim 23, further comprising the step of communicating with another person with the portable phone having a communications processor coupled to the keypad and the display and operable to receive and transmit communications signals (Fig. #2, and Fig. #5 shows on), the communications processor coupled to a speaker and a transducer (Fig. #2, and Fig. #5 Sonic of an Output/Input Unit #14 and #23).

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Yamazaki US 2002/0107055

Zatloukal US 2003/0073462

Ozaki US 2002/0061770

Aagaard US 6,839,576

SanGiovanni US 6,850,784

Matsumoto US 2004/0203527

Park US 2004/0203517

Harmon US 2004/0204015

Jellicoe US 2004/0242289

Lee US 2005/0070348

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Vu whose telephone number is (571) 272-8131. The examiner can normally be reached on 8:00am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael T. Vu

STEPHEN D'AGOSTA
PRIMARY EXAMINER
7-19-05